

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KATHLEEN PROCTOR,)	CASE NO. 5:06CV2323
)	
Plaintiff,)	
)	
v.)	JUDGE PETER C. ECONOMUS
)	
DIALAMERICA MARKETING,)	ORDER
)	
Defendant.)	

This matter is before the Court upon the report and recommendation of Magistrate Judge George J. Limbert. (Dkt. # 35).

On October 19, 2006, Plaintiff, Kathleen Proctor, (“Plaintiff”) filed a *pro se* Complaint alleging, *inter alia*, violations of Title 42 U.S.C. § 12101, the Americans with Disabilities Act, (“ADA”), Title VII, and Title V. The case *sub judice* was referred to Magistrate Judge George J. Limbert for general pre-trial supervision, including all motions. (Dkt. # 8). On January 29, 2007, Defendant, DialAmerica Marketing, (“Defendant”) filed a motion for judgment on the pleadings. (Dkt. # 12). Plaintiff filed her response on January 31, 2007, and a “supplement” to this response on February 2, 2007. (Dkt. #s 13, 14). On February 7, 2007, Defendant filed a reply in support of its motion for judgment on the

pleadings, and a motion to strike Plaintiff's response and supplement. (Dkt. # 18). The Magistrate Judge granted in part Defendant's motion to strike, and, accordingly, all but the first twenty pages of Plaintiff's response was stricken from the record. (Dkt. # 34). Plaintiff's supplement was stricken from the record in its entirety. (Dkt. 34). The Magistrate Judge also granted Defendant's motion to strike Plaintiff's surreply to Defendant's motion, styled as "Plaintiff's Memorandum in Opposition to Defendant DialAmerica's Marketing Inc's Reply in support of its Motion for Judgment on the Pleadings and Motion to Strike." (Dkt. # 25). Finally, the Magistrate Judge granted Defendant's motion to strike Plaintiff's third response to the motion for judgment on the pleadings, styled as "Plaintiff's Memorandum in Opposition to Defendant [sic] Motion to Dismiss." (Dkt. # 26).

In his report, the Magistrate Judge recommends that the Court grant Defendant's motion for judgment on the pleadings. (Dkt. # 12). Specifically, the Magistrate Judge recommends the Court find that Defendant has met its burden in establishing that issue preclusion bars Plaintiff's ADA claims and therefore grant Defendant's motion for judgment on the pleadings with regard to those claims. Furthermore, the report recommends finding that Plaintiff has failed to allege a violation of Title VII in her Amended Complaint. Even if Plaintiff had stated such a claim, the Magistrate further recommends that the Court grant Defendant's motion for judgment on the pleadings because Plaintiff failed to exhaust the administrative remedies available to her Title VII claims. Finally, because Plaintiff has failed to allege that Defendant has received any federal funds or that Defendant operated under any program or activity conducted by any Executive agency or by the United States Postal

Service, Magistrate Judge recommends that the Court grant Defendant's motion for judgment on the pleadings with regard to Plaintiff's Title V claim. (Dkt. # 35).

As the report recommends granting Defendant's motion for judgment on the pleadings and dismissing Plaintiff's Amended Complaint with prejudice, the Magistrate Judge further recommends that this Court deny Plaintiff's motion for judgment on the pleadings. (Dkt. # 19).

Plaintiff has made numerous filings since the issuance of Magistrate Judge Limbert's report, amongst them a "Response Written in [sic] Response to Report [sic] and Recommendation of [sic] Magistrate Judge" (Dkt. # 37) and an "Objection to the Order Forthcoming from Magistrate Judge" (Dkt. # 38) which can be construed as objections to the report and recommendation of the Magistrate Judge. However, after reviewing the report and recommendation of the Magistrate Judge, *de novo*, the Court finds that the report and recommendation (Dkt. # 35) is well-supported and that Plaintiff's objections are without merit.

Therefore, the Magistrate Judge's report and recommendation (Dkt. # 35) is hereby **ADOPTED** and Plaintiff's objections are overruled. Accordingly, Defendant's motion for judgment on the pleadings is **GRANTED** (Dkt. # 12) and Plaintiff's Amended Complaint is hereby **DISMISSED** with **PREJUDICE** (Dkt. # 3). Plaintiff's motion for judgment on the pleadings is **DENIED** (Dkt. # 19). All remaining pending motions are **DENIED** as **MOOT**. (Dkt. #s 22, 24, 30, 39, 41, 45, 46, 48, and 49).

IT IS SO ORDERED.

/s/ Peter C. Economus - May 8, 2007
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE